

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO
MINUTE SHEET
BEFORE THE HONORABLE JUDITH C. HERRERA

Motion Hearing

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|--------------|--------------------------------|----------------------|-------------------|--------------------|-------------------|
| CR No: | 18-3495 JCH | USA vs. | Smith | | |
| Date: | 3/16/21 | Defendant: | Douglas Smith | Interpreter: | n/a |
| Time In/Out: | 9:04-10:45; 10:52-11:08 | Total Time: | 1 hour 57 minutes | Hearing in: | remote - via Zoom |
| Clerk: | V. Loman | Court Reporter: | Paul Baca | Probation Officer: | n/a |
| AUSA: | Novaline Wilson & Kyle Nayback | Defendant's Counsel: | Aric Elsenheimer | | |

PROCEEDINGS

9:04 a.m. Court in session via ZOOM hearing; parties state appearances. Defendant Smith present with counsel and with Daniel Berg.

9:05 a.m. Mr. Elsenheimer notes that the defense continues to object to items 4, 5, and 6 discussed in Memorandum Opinion and Order (ECF No. 141).

9:06 a.m. Mr. Nayback says he will focus his arguments on where the disputes are, the blue statements, in the transcripts. The parties go through each disputed portion of the transcripts, referring to ECF Nos. 135-1, 135-2, and 135-3, concerning the admissibility of certain statements.

10:32 a.m. The parties complete their arguments concerning the admissibility of statements.

10:39 a.m. Court asks clarification questions. Parties respond.

10:42 a.m. Ms. Wilson addresses issue concerning admissibility of 9-11 call.

10:45 a.m. Recess.

10:52 a.m. Court is back in session. Mr. Elsenheimer argues that the 9-11 call should be admitted under the excited utterance exception, but he agrees chatter contained within the call should not come in. Mr. Elsenheimer presents transcript of 9-11 call.

10:56 a.m. The Court asks about the timing of the 9-11 call. Mr. Elsenheimer plays a recording of the 9-11 call. He contends that the contents should be admitted, but he agrees that page 2, lines 12-19 should be excluded because it is the dispatcher's characterization. Mr. Elsenheimer says he will send the Court a copy of the 9-11 call. The Court asks for the portions of the transcript that Defendant seeks to admit.

11:02 a.m. Ms. Wilson responds, giving her reasons that the statements should not be admitted.

11:04 a.m. Defendant replies.

11:06 a.m. Ms. Wilson discusses amending exhibit list before trial and asks about scheduling. The Court responds that it will take the matter under advisement, issue a ruling, and then set a status conference.

11:08 a.m. Recess.